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No. 82-245

IN THE SUPREME COURT OF THE
UNITED STATES

OCTOBER TERM, 1982

ANDREA CISNEROS JALIFI, WIDOW,

Appellant,

vs.

THE INDUSTRIAL COMMISSION OF ARIZONA, and DAN SKOUSEN dba SKOUSEN RANCH and/or SKOUSEN FARMS,

Appellees.

On Appeal From the Supreme Court of Arizona

Motion to Dismiss or, in the alternative, to Affirm

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MOTION

COMES NOW, the Appellee, Dan Skousen, dba Skousen Ranch and/or Skousen Farms, by his attorney below-named, and pursuant to Rule 16 of the Supreme Court Rules, moves this most Honorable Court to Dismiss or, in the alternative, to Affirm the decision of the Arizona Supreme Court in the above-entitled and captioned matter. The grounds for this Motion are herein below enumerated.

CONSTITUTIONAL AND STATUTORY PROVISIONS

Article 1, Section 8(3): The Congress shall have the power...to regulate commerce with foreign nations (4) to establish a uniform rule of naturalization.

Article 2, Section 2(2): The President shall...have power...to make treaties. Tenth Amendment, United States Constitution: the powers not delegated to the United States by the Constitution, nor prohibited by it to the states are reserved to the states respectively, or to the people

Fourteenth Amendment, United States Constitution, Section 1 "nor shall any state...deny to any person within its jurisdiction the equal protection of the laws."

8 U.S.C. Section 1101(a)(20) Immigration and Nationality Act. A.R.S. § 23-901 *et. seq.* A.R.S. § 23-1046(C). N.M.S.A. Section 52-1-52.

GROUNDS FOR APPELLEE'S MOTION TO DISMISS OR, IN THE ALTERNATIVE, TO AFFIRM

I

Based upon the jurisdiction prerequisites of the Fourteenth Amendment, it is manifestly clear that the questions on which the decision of this cause depends are so unsubstantial as not to need further argument.

II

It is patently clear from the relevant case law, statutes, and treaties, that neither Equal Protection nor Substantive or Procedural Due Process was denied the Appellant in this cause. Accordingly, this case should be dismissed.

Subpart A - Equal Protection Argument

Subpart B - Substantive Due Process Argument

Subpart C - Procedural Due Process Argument

III

The case at bar presents this Honorable Court with a "political question" because the question to be decided is delegated to another branch of the government, thus this court should decline to review this case on the merits.

IV

The form of the Jurisdictional Statement violates Rule 33(5)b of the Rules of this Court and, pursuant to Rule 33(7), this Appellee prays for dismissal of this action.

STATEMENT OF THE CASE

In order to clarify the statement of the case, as presented by the Appellants in this matter, it is necessary to emphasize certain portions of the record from the Court of Appeals and the Industrial Hearing.

Hereinafter, reference will be made to the Appellant's Jurisdictional Statement and the Appendix attached thereto. The Jurisdictional Statement will be referred to by the letters *JS* and the Appendix, attached thereto, will hereinafter be referred to by the initials *JSA*.

At the Industrial Commission hearing, the Appellant, Andrea Jalifi, originally argued that the Amended Award was a violation of the Supremacy Clause because she claimed that she was a "green-carded" alien and that such status afforded her rights and privileges not allowed to non-resident aliens. At oral argument, however, the Appellant stipulated that she was not in fact a green card holder and, therefore, waived the Supremacy Clause argument. *See JSA, page 6.*

The Appellant, in her Statement of the Case, states that the deceased was survived by his wife and three minor children. *See JS, page 3.* The statement leaves this Court with the inference that all four relatives are financially dependent upon the award made to the Appellant. Such is not the case, as can be seen from *JSA, page 5*, wherein the Appeals Court states that two out of the three children had duality of citizenship

and that they were awarded full benefits pursuant to A.R.S. §23-1046(A)5.

On the thirteenth day of August, 1979, the Commission issued a Findings and Award for Death Benefits wherein it awarded Andrea Cisneros Jalifi, the Appellant, the sum of $157.50 per month until her death or remarriage.

Before that award became final, the Commission issued an Amended Findings and Award for Death Benefits on the ninth day of October, 1979, wherein the $157.50 per month award was reduced to $94.50 per month pursuant to the provisions of A.R.S. §23-1046(C). It is important to note that this Amended Award was made *before it became final. See JSA, page 5.*

The Appellant's Statement of the Case implies that the reduction was made arbitrarily, because no reference is made to the fact that the Amended Award was issued before the Award had become final. *See JS, page 3.*

In the Appellant's Statement of the Case, it is set forth that a timely Petition for Special Action followed, and that the statute A.R.S. §23-1046(C), was challenged on the basis of Equal Protection, Supremacy Clause, and Due Process grounds. *See JS, page 3.* As is stated above, the Supremacy Clause argument was waived at the Appeals Court level, *supra.* The Due Process grounds, as a basis for attack on A.R.S. § 23-1046(C), appears to have been abandoned by the Appellant, because in the Statutory and Constitutional Provisions *See JS, page 2,* Equal Protection

is the only specific constitutional provision raised. The Statement of the Case, as set forth by the Appellant is somewhat misleading as to which provisions are being raised on this appeal. *See JS, page 3.*

Since the Appellant's Statement of the Case and Statutory and Constitutional Provisions are unclear, this Appellee argues both Equal Protection and Due Process in this Motion.

The Appellant appeals to this Court as both a citizen and resident of Mexico. The Appellant was not a resident of the United States on the date of her husband's untimely death. In fact, since her marriage to Miguel Jalifi, the Appellant has always resided in Mexico and has never been a citizen of the United States. *See JSA, page 8.*

GROUNDS IN SUPPORT OF APPELLEES MOTION TO DISMISS OR, ALTERNATIVELY, TO AFFIRM

I

Based upon the jurisdictional prerequisites of the Fourteenth Amendment, as applied to the States through its Due Process clause, it is manifestly clear that the questions on which the decision of this cause depends, are so unsubstantial as not to need further argument.

II

It is clear from the history, relevant case law, federal and state statutes, and U.S. Treaties, that the Appellant in this cause has been denied neither Equal Protection nor Due Process and, accordingly, this case should be dismissed.

Subpart A - Equal Protection Argument

Subpart B - Substantive Due Process Argument

Subpart C - Procedural Due Process Argument

III

The case at bar presents this Honorable Court with a "political question" because the matter to be decided is delegated by the Constitution of the United States to another branch of government, thus, the court should decline review on the merits.

IV

The form of Appellant's Jurisdiction Statement violates Rule 33(5)(b) of the

Supreme Court rules and, pursuant to Rule 33(7), this Appellee prays for Dismissal of this action.

ARGUMENT

I

BASED UPON THE JURISDICTIONAL PREREQUISITES OF THE FOURTEENTH AMENDMENT, AS APPLIED TO THE STATES THROUGH ITS DUE PROCESS CLAUSE, IT IS MANIFESTLY CLEAR THAT THE QUESTIONS ON WHICH THE DECISION OF THIS CAUSE DEPENDS, ARE SO UNSUBSTANTIAL AS NOT TO NEED FURTHER ARGUMENT.

The Appellant contends that A.R.S. § 23-1046(C) violates the Equal Protection clause of the Fourteenth Amendment to the United States Constitution, as applied to the states through its Due Process clause. *See JS, page 4.*

Mrs. Jalifi's claim is that A.R.S. § 23-1046(C) creates an unconstitutional classification, insofar as non-resident aliens are awarded a lesser amount than resident aliens.

The Fourteenth Amendment provides, in pertinent part, that "No state shall... deprive any person of life, liberty or property without due process of the law; nor deny to any person *within its jurisdiction* the equal protection of the laws". U.S. Const., Amend. XIV. (Emphasis added). The Appellant's reliance on the Fourteenth Amendment is misplaced, since it applies only to "persons within the territorial jurisdiction" of the United States. *Yick Wo v. Hopkins*, 118 U.S. 356, 369 (1886).

The Appellant contends that she is "within the jurisdiction" of Arizona for Fourteenth Amendment purposes, despite the

fact that she has been, during all the relevant times herein, a citizen and resident of Mexico. In support of this proposition, the Appellant cites *Kentucky Finance Corporation v. Paramount Auto Exchange*, 262 U.S. 544, 550 (1923). *JS, page 5.* The Appellant also cites *Mathew v. Diaz*, 426 U.S. 627 (1976); *Johnson v. Eisentrager*, 339 U.S. 763 (1950); and *Yick Wo v. Hopkins, supra.*

The last three cases are cited for the proposition that because the event giving rise to her claim occurred in Arizona, Mrs. Jalifi may challenge the non-resident classification that withdraws a portion of her otherwise vested claim for benefits. *See JS, page 5.*

The *Kentucky Finance Corporation* case is cited for an erroneous proposition of law, i.e. that if jurisdiction is conferred upon a party to bring a suit within a state, the jurisdiction conferred thereby, is the same jurisdiction that is required to be protected by the Equal Protection clause.

The thrust of the *Kentucky Finance Corporation* case is that if a foreign corporation had its property illegally taken into a state, they should be able to sue in that state's court system without the imposition of additional burdens not imposed on in-state corporations. The issue was equal access to the state's court system; not having anything to do with the substantive rights, as guaranteed by the Fourteenth Amendment, granted resident aliens and citizens. The major policy rationale, as discussed in

that case, was that the legal system should be available to all persons: citizens, resident and non-resident aliens alike, especially where property rights have been deprived.

The Supreme Court held, in that case, that the mere filing of a law suit in a state court was not enough to bring the plaintiff "within the jurisdiction" for that purpose alone. However, the court did not rule that the phrase "within the jurisdiction" for the purpose of a law suit was equivalent to "within the jurisdiction for Fourteenth Amendment Equal Protection purposes.

In *Yick Wo v. Hopkins, supra,* the Appellant's reliance is also misplaced since it applies only to "persons within the territorial jurisdiction" of the United States. *Id.* 369. In the *Johnson* case, cited by the Appellant for the "jurisdiction" proposition, this Court stated that it "has been at pains to point out that it was the aliens' presence within its jurisdiction that gave the judiciary power to act." 339 U.S. 63, 771 (1950).

The common thread running through all of the cases cited by Mrs. Jalifi, is that they refer to *resident aliens.* For instance, in voiding an Arizona law forbidding private employers from employing more than a fixed percentage of aliens, this Court, in *Traux v. Raich,* 239 U.S. 33 (1915), declared that a state may not "deny lawful *inhabitants*...the ordinary means of earning a livelihood." *Id.* at 41. (Emphasis added).

Similiarly, the aliens who challenged the state law in *Graham v. Richardson*, 403 U.S. 365 (1971), were lawfully admitted *permanent residents* who were held to be entitled "to equal protection of the laws of the state in which they *reside*." *Id.* at 41. (Emphasis added).

Thus, the Appellant, as a permanent resident of Mexico, is not protected by the Fourteenth Amendment which "by its own terms, has no application to aliens not within the jurisdiction of the United States." *DeTenorio v. Mogowan*, 510 F.2d 92, 101, *reh. denied*, 513 F.2d 294 (5th Cir.), *cert. denied*, 423 U.S. 877 (1975). Only if the Appellant somehow surmounts this jurisdictional limitation of the Fourteenth Amendment, will it be necessary to treat her contention that A.R.S. § 23-1046(C) creates an unconstitutional classification on the basis of non-resident alienage. This Appellee contends that Mrs. Jalifi has not met the Fourteenth Amendment requirement that the person it protects is to be within the state's jurisdiction and, therefore, this case should be dismissed.

II

IT IS CLEAR FROM THE HISTORY, RELEVANT CASE LAW, FEDERAL AND STATE STATUTES, AND U.S. TREATIES, THAT THE APPLICANT IN THIS CAUSE HAS BEEN DENIED NEITHER EQUAL PROTECTION NOR DUE PROCESS AND, ACCORDINGLY, THIS CASE SHOULD BE DISMISSED.

A. Equal Protection Argument

This Appellee submits that the alleged statutory classification is not based upon

alienage per se, but rather upon the residence of the surviving dependent alien. This is not a law that can be explained only as an alien-based classification. The class of persons entitled to full death benefits under the act is not limited to "citizens". *Aliens are included within the class, so long as they reside within the United States.*

The distinction made in A.R.S. § 23-1046 (C), is between aliens residing in the United States and aliens residing in foreign countries; not between aliens and citizens. A.R.S. §23-1046 *et seq.*

The Appellant alludes to an alleged confusion as to the proper constitutional standard to be applied when statutes classify on the basis of non-resident (as opposed to resident) aliens. This Appellee's position, regarding the proper constitutional standard, is that it is to be tested by the traditional "rational relationship" or "rational basis" standard; not the "strict scrutiny" standard. *Mathew v. Diaz*, 426 U.S. 67 (1976).

It is patently clear that resident-aliens enjoy the "heightened judicial solicitude" of a suspect class and, therefore, any classification of a resident alien is subject to "strict judicial scrutiny". *Graham v. Richardson*, 403 U.S. 365, 372. It is important to review the rationale behind applying this stricter standard to resident aliens.

In *Lehndorff Geneva, Inc. v. Warren*, 74 Wis.2d 369, 246 NW.2d 815 (1976), the Supreme Court of Wisconsin reviewed the

"alien cases commencing with *Yick Wo, supra,* and concluded that the underlying rationale of those decisions turned upon the characteristics of *resident* aliens, who, like citizens, "pay taxes, serve in the military and contribute to economic growth." It is the class of resident aliens and not aliens worldwide who are similiarly situated to citizens with respect to taxes, military services and overall contribution to the country." *Id.* 246 NW.2d at 281. In discussing why a stricter standard is applied to resident aliens, the Court said the following:

> "As residents, these aliens bore the burdens imposed by society, but not the sought-after benefits. Nor could they participate in the political process, which is the normal avenue of redress for a citizen unhappy with governmentally-imposed burden. It is this type of situation, the court repeatedly held, 'heightened judicial solicitude' is appropriate." *Id.* at 822.

The court concluded that non-resident aliens did "not possess the characteristics which warrant heightened judicial solicitude." *Id.* at 824.

Instead, the non-resident aliens were compelled to prove that "the classification is arbitrary and has no rational purpose or relationship to the facts or a justifiable and proper state policy...". *Id.* at page 824-5.

Identically, the Appellant, in the case at bar, shares none of the "duties and

burdens" which resident aliens have in common to the citizens of the United States. Consequently, her challenge to A.R.S. § 23-1046(C), must be measured by the "rational basis" or "rational relationship" standard and it is incumbent upon her to establish that the classification is "arbitrary and capricious." *U.S. v. Carolene Products*, 304 U.S. 144 (1938).

There is an exception to the "rational relationship" or "rational basis" test, which is applied to non-resident aliens, and that is if there exists a treaty between the United States and the foreign country where the non-resident alien resides. *Antosz v. State Compensation Commissioners*, et.al., 130 W.VA 260, 43 S.E.2d 397 (1947) (where a treaty existed between Poland and the United States and the Equal Protection clause was held applicable to the non-resident alien); *Iannone v. Radory Construction Corp.*, 285 App. Div. 75, 141 N.Y.S.2d 311 (1955), *affirmed*, 150 N.Y.S.2d 199, 133 N.E.2d 199 (where the non-resident aliens resided in Italy and a treaty existed between the United States and Italy, the equal protection applied to the non-resident aliens).

The Appellant cites *Vietti v. George K. Mackie Fuel Co.*, 109 Kansas 179, 197 Pac. 881 (1921). If taken in the context used by the Appellant, however, the proposition this case stands for is misleading. The Plaintiffs in *Vietti* were lawful inhabitants of Kansas and, therefore, had the right to invoke the protection of the Fourteenth Amendment. The case had nothing to do with non-resident aliens, as was implied by the Appellant.

The California case of *Western Metal Supply Co. v. Pillsbury*, 172 Cal. 407, 156 Pac. 491 (1916), upon which the Appellant relies so heavily for the proposition that non-resident aliens are entitled to the stricter standard of judicial review, *See JS, pages 5-6*, is a 1916 case. The date, considered with the fact that the cited portion is dicta rather than the holding, makes the Appellant's argument very weak. *See JS, page 6.*

In the case at bar, the relevant treaty would be between the United States and Mexico, since the Appellant is a citizen of Mexico. At the time of the deceased's injury, there was no treaty with Mexico that gave its citizens equal rights with American citizens to workers' compensation.

The former Treaty of Amnity, 8 STAT. 410, Treaty Series, 2305, Art. 15, gave citizens of Mexico residing in the United States the same rights and privileges that were enjoyed by the United States Citizens. *This treaty was terminated November 30, 1881.* (Emphasis added).

Since no agreement exists between the United States and Mexico, concerning Workers' compensation, A.R.S. § 23-1046(C) does not violate the Supremacy Clause nor the Equal Protection clause by reducing benefits to aliens residing in Mexico.

In *Hampton v. Mow Sum Wong*, 426 U.S. 88, 96 Sup. Ct. 1895 (1976), plaintiffs were aliens *residing in San Francisco*, who challenged the citizenship requirement of the Civil Service Commission. In *Graham v. Richardson, supra*, the plaintiffs were

lawfully admitted aliens. In *Doe v. Plyler*, 458 F.Supp. 569 (1978), the plaintiffs were alien children *residing illegally in this country.* Nevertheless, the court found that they worked "within the jurisdiction" of the United States for purposes of public school assistance. Similiar cases can be cited for any fundamental necessity, i.e. medical benefits, welfare benefits, etc. *Memorial Hospital v. Maricopa County*, 415 U.S. 250 (1974).

The key element in the above-mentioned cases is that the aliens were, in fact, residing in the United States.

The Appellant cited *Sailer v. Tonkin*, 356 F.Supp. 72 (Virgin Islands 1973), for the proposition that strict scrutiny was applied to non-resident aliens. This contention is erroneous. The federal court applied the "compelling interest" test, thus subjecting the statute to "strict scrutiny" but, once again, the aliens involved were present on the island when the accident occurred.

A.R.S. § 23-1046(C), passes the "rational basis" or "rational relationship" test. It has been held that the purpose of the workers' compensation laws is to prevent a person and his dependants from becoming public charges during the period of disability. *Progisin v. Industrial Commission*, 113 Ariz. 187, 546 P.2d 823 (1976). Aliens residing in the United States are more likely to become public charges than aliens residing in foreign countries. Furthermore, as stated by the Supreme Court of Utah, "the principal reason for the

policy of paying a less amount of compensation to dependants who are non-resident aliens is the well-known fact that the cost of living in most foreign countries is substantially less than in the United States". *Continental Casualty Co. v. Industrial Commission*, 68 Utah 334, 250 P. 141 (1926).

While it may be debatable that the Statute "is wise, that it best fulfills the relevant social and economic objectives that [Arizona] might ideally espouse, or that a more just and humane system cannot be devised, this tribunal may not substitute its own judgment for that of the legislative body." *Dandridge v. Williams*, 397 U.S. 471, 487 (1970).

The policy reasons which underly A.R.S. §23-1046(C), are not so "patently arbitrary" as to require their rejection. On the contrary, in *DeCanas v. Bica*, 424 U.S. 351 (1975), the Supreme Court upheld a California law prohibiting employers from knowingly employing aliens who are not entitled to lawful residence in the United States, if such employment would have an adverse effect on lawful resident workers. The court reasoned that the state law was "certainly within the mainstream of (its) police power regulation" and was a proper exercise in protection of the states' fiscal interest. *Id.* at 357. For the foregoing reasons, it is respectfully submitted that A.R.S. § 23-1046(C) is not violative of the Equal Protection clause of the Fourteenth Amendment, as it is applied to the states through the Due Process clause.

B. Substantive Due Process Argument.

The Appellant, Mrs. Jalifi, alleges that the non-resident alien classification withdraws a portion of her otherwise *vested* claim for benefits. (Emphasis added).

Although in the Jurisdictional Statement by the Appellant, under Statutory and Constitutional Provisions and Questions Presented, no mention is made of the Due Process clause of the Fourteenth Amendment. *See JA, page 2.* However, under Questions Presented, the Appellant asked a very broad question to the effect of whether the statute in question is constitutionally permissible. *Id.*

Assuming, arguendo, that non-resident aliens are entitled to Fourteenth Amendment Due Process rights, A.R.S. § 23-1046(C) does not implicate any constitutionally protected property in which the Appellant has a legitimate claim of entitlement.

In the Appellant's Jurisdictional Statement, it is alleged that the statute withdraws a portion of "her otherwise vested claim" for benefits. *See JA, page 5.*

The Due Process clause of the Fourteenth Amendment does not *ex propio vigore* extend rights. As a matter of law, property rights are not created by the constitution but, rather, are created and defined by existing rules or understandings that stem from independant sources such as state law. *Board of Regents v. Roth,* 408 U.S. 554, 577 (1972).

In the *Roth* case, this court stated the following:

"To have a property interest in a benefit a person clearly must have more than an abstract need or desire for it. He must have more than a unilateral expectation of it. He must, instead, have a legitimate claim of entitlement to it. *Id.*

In *Perry v. Sinderman*, 408 U.S. 593 (1972), it was found that a "person's interest in a benefit is a 'property interest' for Due Process purposes if there are...rules of mutually explicit understandings that support his claim of entitlement to the benefits...".*Id.* at 601.

In the case at bar, the relationship between the deceased employee and his employer gave rise to the rules or mutually explicit understandings: that define and control any alleged property interest of the petitioner".

It is clear, that Mrs. Jalifi had no entitlement to death benefits prior to and independant of the death of her husband. The employment relationship, which her husband continued until his death, was purely contractual. Presumably, Mr. Jalifi was aware that his wife was a non-resident alien. He had constructive, if not actual, notice that under the statute she would receive less than full benefits, if he were to die in the scope of his employment.

Nevertheless, he opted to remain subject to the Arizona Workers' Comepnsation Act, thereby binding his wife to his provisions, including A.R.S. § 23-1046(C). In other

words, by accepting the benefits of the Act, the Petitioner's husband, in effect, contracted as to the amount of death benefits his wife, as a non-resident alien, would receive. She may not now complain, since she has no "vested" rights other than the "rules of mutually explicit understandings". These rules and understandings were created by her husband's "contract" and the statutory consequences of that "contract".

In *Fleming v. Nestor*, 363 U.S. 603 (1960), this Court upheld the expungment of Social Security benefits due aliens, who were deported from the United States. The court reasoned that due process bars withholding the benefits under a social welfare program only if the statute manifests a patently arbitrary classification, utterly lacking in rational justification. *Id.* at 611.

> Such is not the case here. The fact of a beneficiary's residence abroad--in the case of a deportee, a presumable permanent residence--can be of obvious relevance to the question of eligibility. One is the benefits which may be thought to accrue to the economy from the Social Security system is the increased overall national purchasing power resulting from taxation of positive elements of the economy to provide payment to the retired and disabled, who might otherwise be destitute or nearly so, and who would generally spend a comparatively large percentage of their benefit payment. This advantage would be lost as to

payments made to one residing abroad. *Id.* at 612.

This court held that the provision of the Act "cannot be condemned as being so lacking in rational justification as to offend the process." *Id.*

The Appellant claims that she has been denied substantive due process of the law. The basis of her claim is that at the time of her husband's death, she had a property right in full widow's benefits which were reduced by the Commission without Due Process of law.

First, the rationale which underlies her claim lacks merit, because although a widow's right to benefits may come into existence at the time of her husband's death, her rights are contingent upon Arizona workers' compensation laws. Such contingencies include, for example, whether she files a claim within the one year period provided by law, A.R.S. § 23-1061. Consequently, the Appellant's property right to benefits does not vest until a final award has been made by the Commission. *Moore v. Industrial Commission*, 24 Ariz.App. 324, 538 P.2d 411 (1975). The Appellant would not have a vested property right in death benefits until a final award is made.

The New Mexico Supreme Court just recently denied a constitutional attack on N.M.S.A., Section 52-1-52, which provides that no workers compensation shall accrue to relatives or dependants not residents of the United States. *Carmen Pedrazza, et. al. v. Sid Fleming*

Contractor, Inc., 94 NM 59, 607 P.2d 597 (1980).

The court held that workers compensation is not a fundamental right or vested property interest for due process purposes and, furthermore, the legislature intended that property rights in workers' compensation claims *never vest* in non-resident alien dependant cases. *Id.* (Emphasis added).

As previously discussed, there is a rationale basis for reducing benefits to non-resident aliens, living in foreign countries. Since such persons are not likely to become charges of the state, it is reasonable that the legislature would reduce benefits. Moreover, benefits under the Arizona statutory scheme are not lost completely. They are merely reduced.

It is not arbitrary and capricious for a legislature to assume that the standard of living, in foreign countries, is lower than that in the United States.

Subsection C.

Procedural Due Process Argument

The Appellant cannot claim that she has been denied procedural due process by the Commission. Her rights to widow's benefits had not vested at the time the Commission entered its amended award, reducing her benefits pursuant to A.R.S. § 23-1046(C). Furthermore, she was given notice and opportunity to be heard, both at the administrative level and at the appeals level, both of which she

exercised.

Thus, any procedural due process violation that the Appellant claims is devoid of merit. This is true because the Commission hearing, and the appeals process, have provided her with ample opportunity to vindicate her legal and factual claim of legal entitlement to death benefits. Procedural due process requires nothing more. *Board of Regents v. Roth*, 408 U.S. 564, 577 (1977).

III

THE CASE AT BAR, PRESENTS THIS MOST HONORABLE COURT WITH A "POLITICAL QUESTION" BECAUSE THE QUESTION TO BE DECIDED, IS DELEGATED TO ANOTHER BRANCH OF GOVERNMENT, THUS, THIS COURT SHOULD DECLINE REVIEW ON THE MERITS.

This Appellee directs the Court's attention to Article 2, subsection 2, of the United States Constitution, wherein the Treaty power is delegated to the executive and legislative branches of government.

The Appellant seeks to have this Court apply the "strict scrutiny" standard when reviewing legislation classifying non-resident aliens. Should this Court accept Appellant's invitation to set a higher standard of review for non-resident equal protection claims, it will have the effect of creating a unilateral treaty, *defacto* with every country in this world, where non-resident aliens dependant upon U.S. residents, are located.

For example, in the instant case, no

treaty exists between the United States and Mexico, as to equal rights to workers compensation. If this Court rules in favor of the Appellant, the effect would be to create a unilateral treaty with Mexico, conferring upon the dependant resident in Mexico equal rights to Arizona workers compensation benefits, but not providing for any reciprocity by the government of Mexico. It is this Appellee's contention, that such a decision should be made by executive and legislative branches of the federal government, by way of treaty, as was done with Poland and Italy. *See Treaty Discussion, supra at II.*

The "political question" doctrine was succinctly stated in *Baker v. Carr*, 369, U.S. 186 (1962), and follows:

> "Prominent on the surface of any case held to involve a political question is found a textually demonstrable constitutional committment of the issue to a political coordinate department; or a lack of judicially discoverable and manageable standards for resolving it; or the impossibility of deciding without initial policy of a kind clearly for non-judicial discretion; or the impossibility of a court's undertaking an independant resolution without expressing lack of respect due coordinate branches of government...; or the potentiality of embarrassment of multivarious pronouncements by various departments on one question. *Id.*

All of the above factors are present in the case at bar. Thus the Appellee respectfully moves this Court to dismiss the action because there are no justifiable grounds upon which an adequate political question can be decided by this Court.

IV

THE FORM OF JURISDICTIONAL STATEMENT, VIOLATES RULE 33(5)B, OF THE RULES OF THIS COURT, AND PURSUANT TO RULE 33(7), THIS APPELLEE PRAYS THIS HONORABLE COURT TO DISMISS THIS ACTION.

A passing glance at the Jurisdictional Statement -- the Statement of Authorities, revealed that almost all of the cases cited therein by the Appellant, referred to incorrect page numbers.

This error is clearly in violation of Rule 33(5)B and, pursuant to Rule 33(7) this Appellee moves this Honorable Court to dismiss this cause of action.

CONCLUSION

For all of the foregoing reasons, this Appellee moves this most Honorable Court to Dismiss, or in the alternative, Affirm the Award of the Commission, and subsequent holding of the Arizona Supreme Court.

Respectfully submitted this 9th day of September, 1982.

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